

<div>CITY OF SAN JOSÉ, CALIFORNIA</div> <div>Department of Planning, Building and Code Enforcement</div> <div>801 North First Street, Room 400</div> <div>San José, California 95110-1795</div> <div>STAFF REPORT</div>		Hearing Date/Agenda Number P.C. 07/09/03    Item: 4.b.	
		File Number CP 03-024	
		Application Type Conditional Use Permit	
		Council District 3	
		Planning Area Central	
		Assessor's Parcel Number(s) 472-05-026	
PROJECT DESCRIPTION		Completed by: Lee Butler	
Location: southeast corner of South 24th Street and East San Antonio Street			
Gross Acreage: 2.16		Net Acreage: 2.16	
		Net Density: N/A	
Existing Zoning: LI- Light Industrial		Existing Use: Towing Yard / Vehicle Storage	
Proposed Zoning: No change		Proposed Use: Vehicle lien sales auctions for an existing towing yard and vehicle storage facility on a 2.16 gross acre site	
GENERAL PLAN		Completed by: FLB	
Land Use/Transportation Diagram Designations: Light Industrial with a Mixed Industrial Overlay		Project Conformance: [x] Yes    [ ] No [ ] See Analysis and Recommendations	
SURROUNDING LAND USES AND ZONING		Completed by: FLB	
North: Commercial & Residential		CP Commercial Pedestrian & LI Light Industrial	
East: Industrial		LI Light Industrial	
South: Industrial		LI Light Industrial	
West: Commercial & Residential		LI Light Industrial	
ENVIRONMENTAL STATUS		Completed by: FLB	
[ ] Environmental Impact Report found complete		[x] Exempt	
[ ] Negative Declaration circulated on		[ ] Environmental Review Incomplete	
[ ] Negative Declaration adopted on			
FILE HISTORY		Completed by: FLB	
Annexation Title: McLaughlin No. 16		Date: 07/27/1981	
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION			
[ ] Approval		Date:	Approved by: _____
[x] Approval with Conditions		_____	[ ] Action
[ ] Denial			[ ] Recommendation
OWNERS	APPLICANT/DEVELOPER		
Ken Carvalho City Towing, Inc. 222 South 24 <sup>th</sup> Street San José, CA 95116	Ray Hashimoto HMH Engineers P.O. Box 611510 San José, CA 95131		

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PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Lee Butler

Fire Department & Strong Neighborhoods Initiative Division  
See conditions of approval.

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GENERAL CORRESPONDENCE

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None received

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ANALYSIS AND RECOMMENDATIONS

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**BACKGROUND**

The applicant, City Towing, is requesting a Conditional Use Permit to allow lien sales vehicle auctions at an existing tow yard facility on a 2.16 gross acres site. A Site Development Permit (file number H99-12-100) was issued in 2000 for fencing, landscaping, and lighting improvements for the existing towing facility at the subject property. In accordance with Table 20-110 of the San José Municipal Code, a Conditional Use Permit (CUP) is required for auction uses in the LI-Light Industrial Zoning District. The authorization of the lien sales events is the only proposed expansion of use at the site. The applicant has a contract with the City of San José to tow vehicles for approximately the next five years.

Per Section 22851.1 of the California Vehicle Code, the State of California requires that all tow companies conduct lien sales to dispose of vehicles that are not claimed within a given time period. The lien sale is conducted in the manner of an auction. The vehicle auctions would be limited to unclaimed vehicles originating from the towing yard located on the subject sites.

The existing facility currently occupies one parcel at the southeast corner of East San Antonio Street and South 24<sup>th</sup> Street. The parcel is roughly square in shape with approximately 250 feet of frontage on South 24<sup>th</sup> Street and approximately 224 feet of frontage on East San Antonio Street. The level site has a Light Industrial Zoning and General Plan Land Use/Transportation Diagram designation. The site is bordered by industrial uses to the east and south. Commercial buildings occupy the two corner parcels opposite the site on the southwest and northeast corners of 24<sup>th</sup> and San Antonio, respectively. Adjacent to these commercial properties and across the streets from the subject site are residential properties.

The subject application proposes to conduct lien sales vehicle auction events in accordance with the attached plan set and operations plan. Access to the lien sales activities and associated parking (for attendees) is from the driveway on South 24<sup>th</sup> Street. Areas designated for lien sales attendee parking are to remain open and accessible during and throughout all lien sales events. These parking areas are to be roped off during the auction events so that vehicular circulation is not impeded by the auction sales and/or attendees.

No other modifications to the site and no other expansions of the existing use are proposed at this time.

## **ENVIRONMENTAL REVIEW**

The Director of Planning has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act pursuant to Section 15332 which pertains to infill development projects that are consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; occur within city limits on a project site of no more than five acres substantially surrounded by urban uses; located on a site that has no value as habitat for endangered, rare or threatened species; would not result in any significant effects relating to traffic, noise, air quality, or water quality; and located on a site that can be adequately served by all required utilities and public services such as that which is proposed. This proposal conforms with the Light Industrial with Mixed Industrial Overlay General Plan and Light Industrial Zoning designations for the property, occurs within the City limits on a 2.16 gross acre site, is surrounded by urban uses, does not affect any threatened species, results in no significant environmental effects, and can be adequately served by all required utilities and public services. Therefore, the proposed minor expansion of use qualifies for the Section 15332 CEQA exemption.

## **GENERAL PLAN CONFORMANCE**

The existing facility has a General Plan Land Use/Transportation Diagram designation of Light Industrial with a Mixed Industrial Overlay. The towing facilities, outdoor storage, and proposed auction are all industrial uses that are consistent with the General Plan designation.

## **ANALYSIS**

In order to isolate the lien sales auction use and all of its effects onto the subject site, several issues required examination. These included on-site parking for the auction attendees, trash and noise resulting from the auctions, and the removal of vehicles purchased at the auctions.

Table 20-190 of the San José Municipal Code states that the parking requirements for an auction house are 1 per 2 seats, or 1 per 50 square feet of auction area exclusive of warehouse area, whichever is greater. The number of seats in an auction house is equatable to the number of attendees at an auction event. Because the square footage of the auction area would require fewer parking spaces than would the total number of auction attendees, the higher standard is used and a total of 1 parking space needs to be provided for every 2 auction attendees. The applicants propose to provide 20 parking spaces on-site, therefore a maximum of 40 auction attendees will be permitted at any given time. Signs will be posted on-site to direct auction attendees to the designated parking stalls. The parking stalls must remain open and accessible at all times throughout the duration of the lien sales event so that attendees can come and go as they please. Vehicular circulation areas will be roped off so the auction activities do not interfere with vehicular traffic.

Trash clean-up has been included in the operations plan as a concluding step to each auction event, and permit conditions will require the applicant to meet the applicable noise standards from Table 20-135 of the San José Municipal Code, which limit noise from the site to 70 decibels at the property lines adjacent to industrial uses and to 55 decibels at property lines adjacent to residential uses.

DMV requires that the license plates of the vehicles up for auction be removed and destroyed, therefore, no vehicles should be driven from the site. Permit conditions require that all vehicles purchased at the auction be towed from the subject site to their destination. The buyer can either pay the subject facility to tow the vehicle

away, or they can have another tow company take the vehicle from the subject site. The operations plan states a towing arrangement will be made only for non-operational vehicles, however, due to DMV requirements, staff is changing the operations plan to condition that all purchased vehicles be towed from the site to their destination. Buyers may be charged a storage fee for each day the vehicle remains at the site, and conditions of this permit prohibit auction vehicles from being stored on-street prior to, during, and after the auction events.

By addressing these key issues through the operations plan and permit conditions, the lien sales will not result in negative impacts on adjacent properties.

## **COMMUNITY OUTREACH**

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. Additionally, Strong Neighborhoods Initiative Neighborhood Action Committee was briefed on the proposal and notified of the public hearing date at their regular monthly meeting. Staff has been available to discuss the proposal with members of the public.

## **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Light Industrial with a Mixed Industrial Overlay on the adopted San José 2020 General Plan Land Use/Transportation Diagram, and the proposed use is consistent with this designation.
2. Title 20 of the San José Municipal Code allows auction uses in the Light Industrial Zoning District only upon issuance of and in compliance with a Conditional Use Permit.
3. This Conditional Use Permit proposes an auction use and site modifications to accommodate that use at the subject property. The proposal designates areas where auctions are to be held and where parking for the auctions is to be provided. No other modifications to the site or to the allowed uses are proposed.
4. The 2.16 gross acre subject site is occupied by an existing tow yard and vehicle storage facility.
5. The existing tow yard and vehicle storage facility at the subject site has a contract with the City of San Jose to provide to the City, upon the City's request, City-generated tow services.
6. The existing facility currently occupies one parcel at the southeast corner of East San Antonio Street and South 24<sup>th</sup> Street. The parcel is roughly square in shape with approximately 250 feet of frontage on South 24<sup>th</sup> Street and approximately 224 feet of frontage on East San Antonio Street.
7. The site is bordered by industrial uses to the east and south. Commercial buildings occupy the two corner parcels opposite the site on the southwest and northeast corners of 24<sup>th</sup> Street and San Antonio Street, respectively. Adjacent to these commercial properties and across the streets from the subject

site are residential properties.

8. The State of California requires that all tow companies conduct lien sales to dispose of vehicles that are not claimed within a given time period. The lien sale is conducted in the manner of an auction. The vehicle auctions would be limited to unclaimed vehicles originating from the towing yard located on the subject sites.
9. Access to the lien sales activities and associated parking (for attendees) is from the driveway on South 24<sup>th</sup> Street. Areas designated for lien sales attendee parking are to remain open and accessible during and throughout all lien sales events. These parking areas are to be roped off during the auction events so that vehicular circulation is not impeded by the auction sales and/or attendees.
10. Under the provisions of Section 15332 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or

Impair the utility or value of property of other persons located in the vicinity of the site; or

- c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and

By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

## CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "City Towing, Inc." dated March 20, 2003 and received in the Planning Divisions on June 23, 2003, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend conditions or restrictions of this Conditional Use Permit incorporated by reference in this Permit in accordance with Section 20.44.200 of the San José Municipal Code.
4. **Operation Plan.** This use shall be operated in the manner specified in the approved Operation Plan titled "Operation Plan for City Auto Towing Facility, 222 S. 24<sup>th</sup> St -San José" dated May 15, 2003 and received in the Planning Divisions on June 18, 2003. Staff has deleted all occurrences of the word "non-operational" from the final section of the Operations Plan, so that the final heading reads "Operational Mitigation for Sold Vehicles" and applies to all vehicles purchased at the auction. Changes to the Operation Plan, including but not limited to changes in the number of parking stalls provided for the auction events, shall require additional approval as determined necessary by the Director of Planning.

5. **Parking and Circulation.** Parking and vehicular circulation areas for the lien sales auction events shall remain open and accessible throughout the duration of the lien sales events. The parking and vehicular circulation areas are to be roped off during and throughout the lien sales events to prevent auction activities from interfering with vehicular circulation.
6. **Fencing.** All fencing shall conform with the approved plans from H99-12-100. The applicant shall remedy the nonconforming fencing situation on East San Antonio Street by providing the vehicle stacking area at the East San Antonio Street gate prior to the commencement of the auction use.
7. **Auction Attendees.** The number auction attendees is limited to a total of two people for each parking space provided on the approved development plans, up to 40 attendees as shown on the approved plans per Concurrent Condition #1.
8. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
9. **Fire Department Comments.** The following requirements from the San José Fire Department must be met.
  - a. Any special events in which the subject location will have 50 or more persons, or area over 750 square feet are required to notify the Fire Department and obtain a "Use Permit" for a Place of Assembly in accordance with Section 105 (Permits) of the Uniform Fire Code.
  - b. A temporary membrane (tent having an area in excess of 200 square feet and/or canopies in excess of 400 square feet) may be erected with a special permit for limited period of time subject to review by the San José Fire Department. All temporary buildings or structures shall be completely removed upon the expiration of the time state in the special permit. All provisions of the Building/Fire Codes shall be enforced. This type of change to the operations plan would also be subject to Planning review, and an Adjustment permit would have to be approved to the satisfaction of the Director of Planning.
10. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
11. **Landscaping.** No new landscaping is proposed. All landscaping shall conform with the approved landscape plan from Site Development Permit H99-12-100 and shall be supported by an automatic irrigation system. Any landscaping approved with H99-12-100 that is not present at the site shall be installed prior to the commencement of the auction use. All dead plant material is to be removed and replaced by the property owner.
12. **DMV Requirements.** The subject facility shall adhere to all applicable regulations of the State of California Department of Motor Vehicles. Nonconformance can result in the suspension or revocation of this Conditional Use Permit.

13. **Auctioned Vehicles.** Vehicles to be auctioned are limited to those originating from the subject City Towing facility. In accordance with DMV regulations, all license plates on vehicles to be auctioned shall be removed and destroyed. Therefore, all vehicles sold at the auctions must be towed by either the subject facility or another towing company to the vehicle's destination. No auction vehicles may be stored on-street prior to, during, or after the auction events.
14. **Noise.** Noise generated by the auction events and all activities at the subject site shall conform to noise performance standards set forth in Table 20-135 of the San José Municipal Code.
15. **City Contract Conformance.** The applicant shall adhere to and comply with all conditions and requirements set forth in the contract agreement between the City of San Jose and the applicant. Any breach of this contract can result in the suspension or revocation of this Conditional Use Permit.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Time Limit.** This Conditional Use Permit expires and has no further force or effect on March 30, 2008.
3. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or the denial of the application for renewal has become final.
4. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or



- c. The use as presently conducted creates a nuisance.